

Elizabeth L. Deeley (Bar No. 230798)
elizabeth.deeley@lw.com
Melanie M. Blunschi (Bar No. 234264)
melanie.blunschi@lw.com
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
415.391.0600 / 415.395.8095 (Fax)

Andrew B. Clubok (*pro hac vice*)
andrew.clubok@lw.com
Susan E. Engel (*pro hac vice*)
susan.engel@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
202.637.2200 / 202.637.2201 (Fax)

Counsel for Defendant Facebook, Inc.

Additional Counsel on Signature Page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHRISTINE HOLT, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. 4:16-cv-02266-JST

**STIPULATION AND ~~[PROPOSED]~~ ORDER
TO STAY CASE PENDING DECISION IN
FACEBOOK, INC. V. DUGUID, NO. 19-511
(S. CT.)**

Judge: Hon. Jon S. Tigar

Defendant Facebook, Inc., and Plaintiff Christine Holt jointly and respectfully request that this case be stayed pending the Supreme Court’s decision in *Facebook, Inc. v. Duguid*, No. 19-511 (S. Ct.), <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-511.html>. This case was previously stayed pending the Ninth Circuit’s disposition of Facebook’s petition for interlocutory review under 28 U.S.C. § 1292(b) of this Court’s decision granting in part and denying in part Facebook’s motion to dismiss. *See* ECF No. 86. That decision held that Holt had plausibly alleged the existence of an automatic telephone dialing system (ATDS). *See* ECF No. 72.

In a related case, *Duguid v. Facebook, Inc.*, No. 15-cv-00985-JST, 2017 WL 635117 (N.D. Cal. Feb. 16, 2017), this Court held that the plaintiff had not plausibly alleged an ATDS, a decision which the Ninth Circuit reversed, *see* 926 F.3d 1146 (9th Cir. 2019). On October 17, 2019, Facebook petitioned the Supreme Court for review of the Ninth Circuit’s decision in *Duguid*. This case remained stayed, and the parties believed it would be prudent to await a decision in *Duguid* before moving this Court to lift the stay. On July 9, 2020, the Supreme Court granted certiorari in *Duguid* to decide “[w]hether the definition of ATDS in the [Telephone Consumer Protection Act (TCPA)] encompasses any device that can ‘store’ and ‘automatically dial’ telephone numbers, even if the device does not ‘us[e] a random or sequential number generator.’” *See Duguid*, Question Presented, <https://www.supremecourt.gov/qp/19-00511qp.pdf>. Here, Holt alleges that Facebook violated the TCPA by using “an automatic telephone dialing system that has the capacity to store and dial telephone numbers, automatically and *en masse*.” ECF No. 29 ¶ 3. The Supreme Court will thus decide the meaning of the ATDS provision at the crux of this case.

On September 24, 2020, this Court sua sponte lifted the stay and scheduled a case management conference for October 27, 2020. The parties have since conferred and now **STIPULATE** that:

1. The Supreme Court’s resolution of *Duguid* is likely to materially affect the disposition of this case, and staying this matter pending resolution of *Duguid* will conserve judicial resources and avoid needless expense;

2. A stay is appropriate, will not prejudice either party, and will best serve the orderly course of justice; and,

3. The parties will notify this Court of the Supreme Court's decision in *Duguid* within 14 days and will include in that notice a proposal for next steps in this case.

IT SO STIPULATED.

Dated: October 5, 2020

Respectfully submitted,

Andrew B. Clubok (*pro hac vice*)
 Susan E. Engel (*pro hac vice*)
 LATHAM & WATKINS LLP
 555 Eleventh Street, NW
 Suite 1000
 Washington, D.C. 20004-1304
 Telephone: (202) 637-2200
 Fax: (202) 637-2201
 Email: andrew.clubok@lw.com
 susan.engel@lw.com

/s/ Melanie M. Blunschi
 Melanie M. Blunschi (Bar No. 234264)
 Elizabeth L. Deeley (Bar No. 230798)
 LATHAM & WATKINS LLP
 505 Montgomery Street
 Suite 2000
 San Francisco, CA 94111-6538
 Telephone: (415) 395-8233
 Fax: (415) 395-8095
 Email: elizabeth.deeley@lw.com
 melanie.blunschi@lw.com

Counsel for Defendant Facebook, Inc.

J. Aaron Lawson (Admitted Pro Hac Vice)
 alawson@edelson.com
 EDELSON PC
 123 Townsend Street, Suite 100
 San Francisco, California 94107
 Tel: 415.212.9300
 Fax: 415.373.9495

/s/ Benjamin H. Richman
 Benjamin H. Richman (Admitted Pro Hac Vice)
 brichman@edelson.com
 EDELSON PC
 350 North LaSalle Street, 14th Floor
 Chicago, Illinois 60654
 Tel: 312.589.6370
 Fax: 312.589.6378

Stefan Coleman (Admitted Pro Hac Vice)
 law@stefancoleman.com
 LAW OFFICES OF STEFAN COLEMAN,
 PLLC
 201 South Biscayne Boulevard, 28th Floor
 Miami, Florida 33131
 Tel: 877.333.9427
 Fax: 888.498.8946

Counsel for Plaintiff Christine Holt

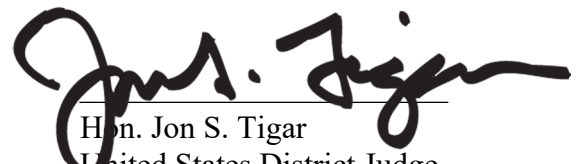
[PROPOSED] ORDER

Upon consideration of the parties' Stipulation to Stay Case Pending Decision in *Facebook, Inc. v. Duguid*, No. 19-511 (S. Ct.), the Court finds that good cause for the requested stay has been shown and **GRANTS** the parties' Stipulation.

This case is **STAYED** pending the Supreme Court's decision in *Facebook, Inc. v. Duguid*. The parties shall notify the Court within 14 days of the Supreme Court's decision in *Facebook, Inc. v. Duguid* and will include in that notice a proposal for next steps in this case.

IS SO ORDERED.

DATED: October 6, 2020



Hon. Jon S. Tigar
United States District Judge